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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/501,887

04/06/2005

Vladimir Velebny

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7590

09/18/2009

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EXAMINER

FINN, MEGHAN R

ART UNIT

PAPER NUMBER

1614

MAIL DATE

DELIVERY MODE

09/18/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/501,887	Applicant(s) VELEBNY ET AL.	
	Examiner MEGHAN FINN	Art Unit 1614	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 September 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-4, 27-30 and 32-37.
 Claim(s) withdrawn from consideration: 6-26 and 38.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Meghan Finn/
 Examiner, Art Unit 1614

/James D Anderson/
 Examiner, Art Unit 1614

Continuation of 3. NOTE: Applicant's after-final amendment dated September 08, 2009 will not be entered into the record because the amendments to claims 39 raise new issues that require further consideration and/or search.

In particular, applicant proposes addition of claim 39, which claims the composition of claim 1 or 27 but further limits the molecular weight range for hyaluronic acid to 1,000,000-2,500,000. This addition would raise new issues because that limits the claims from reading on 200,000-2,500,000 which the claims previously were limited to. Applicant argues that the addition of this claim overcomes the prior art, which might be true, however it raises new issues as it limits the scope of the claims and would require a new search. Furthermore, additional consideration of the presently applied art under 35 U.S.C. 103 would be required, as well as additional assessment of the prior art to determine whether such amendments would obviate the art of record and/or whether additional art would need to be applied.

Accordingly, the proposed after-final amendment of September 08, 2009 will not be entered into the record because it raises new issues that require further consideration and/or search as noted supra and, therefore does not materially reduce or simplify the issues for appeal. .

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's request for reconsideration of the present application with regard to the rejections under 35 U.S.C. 103(a) in light of the amendments to the claims proposed and presented in the after-final amendment has been made. In light of the fact that the proposed amendments to the claims will not be entered into the record, and further in view of the fact that the accompanying remarks are solely directed to the obviation of this rejection of the proposed amendments, the remarks are not found to be persuasive.

For completeness of the record, applicant argues that since Drizen et al. teaches a gel, that a solution cannot be obvious and that Drizen et al. teaches away from a solution by teaching a gel. Drizen et al. does not teach away from using a solution just because they formulated their invention as a gel. One of ordinary skill in the art at the time of the invention would recognize that a solution or a gel could be formulated depending on the desired use for the product and there are many cases where a solution is preferable to a gel and vice versa. It would have been well within the skill of one of ordinary skill in the art to take the teachings of Drizen et al. and convert them into a solution to use in situations where a solution is more desirable than a gel, such as using a solution to reach parts of wound that are hard to access but a liquid could flow into. Applicant's argument was carefully considered but not found to be persuasive.

In absence of any additional arguments or remarks regarding the patentability of the claims pending at the time of the final rejection, the claim amendments will not be entered and the claims remain rejected for the reasons of record previously set forth in the final rejection of July 07, 2009.